

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

GBX PR LLC,

Respondent.

CASE NO.:

1:23 MC 0012

FILED

MAR 21 2023

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

JUDGE BOYKO

PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS

NOW COMES the United States of America, on behalf of its agency, the Internal Revenue Service, by and through undersigned counsel, and avers to this Court as follows:

1. This is a proceeding brought pursuant to the provisions of 26 U.S.C. §§ 7402(b) and 7604(a) to judicially enforce an Internal Revenue Service summons.

2. Tania Malaga is a revenue agent of the Internal Revenue Service and is authorized to issue an Internal Revenue Service summons pursuant to the authority contained in 26 U.S.C. § 7602 and Treasury Regulations, 26 C.F.R. § 301.7602-1.

3. Respondent, GBX PR LLC has designated GBX Registered Agent, LLC, as its registered agent which has, in turn, designated Kelly Hoy as its registered agent. Ms. Hoy's primary place of business is 2101 Superior Avenue, Suite 300 Cleveland, Ohio 44114.

4. Revenue Agent Malaga is conducting an examination of the tax liability of The Natchez New Orleans LLC for the Form 1065 for the tax year ending December 31, 2019. The Declaration of Revenue Agent Malaga is attached and incorporated at Exhibit 2. (Ex. 2, ¶ 2.)

5. Respondent is the taxpayer's partnership representative and is in possession and control of documents concerning the above-described investigation.

6. On June 9, 2022, Revenue Agent Malaga issued an Internal Revenue Service summons directing Respondent to appear before her on July 7, 2022, at 9:00 am at 2 Metrotech Center, Floor 6, Brooklyn, New York to produce books, records, and other data described in the summons or, alternatively, to produce the requested documents on or before such date. Revenue Officer Joanne Gross served the summons on GBX PR LLC, care of its registered agent, by handing a copy of the summons to the person to whom it was directed on June 10, 2022. (*Id.*, ¶¶ 3-5.) The summons is attached and incorporated as Exhibit 1.

7. On July 7, 2022, no representative of Respondent appeared in response to the summons, nor were any documents provided to Revenue Agent Malaga. (Ex. 2, ¶ 7.)

8. On September 7, 2022, a "last chance letter" was sent by IRS attorney Megan Heinz to Respondent proposing an alternate date (September 16, 2022) to comply with the summons. (*Id.*, ¶ 8.) On September 16, 2022, no representative of GBX PR LLC appeared in response to the summons, nor did Revenue Agent Malaga receive any of the summonsed material. (*Id.*, ¶¶ 8, 10.)

9. Respondent's refusal to comply with the summons continues to date.

10. The books, records, papers, and other data described in the summons are not already in the possession of the IRS. (*Id.*, ¶ 11.)

11. All administrative steps required by the Internal Revenue Code for the issuance of a summons have been taken. (*Id.*, ¶ 12.)


12. It is necessary to examine the books, papers, records, or other data sought by the summons to properly examine the Federal tax liability of The Natchez New Orleans LLC for the Form 1065 for the tax year ending December 31, 2019. (*Id.*, ¶ 14.)

WHEREFORE, the Petitioner respectfully prays:

1. That this Court enter an order directing Respondent, GBX PR LLC, to show cause, if any, why Respondent should not comply with and obey the aforementioned summons and each and every requirement thereof. A proposed Order to Show Cause is attached hereto at Exhibit 3.¹
2. That the Court enter an order directing Respondent, GBX PR LLC, to obey the aforementioned summons and each and every requirement thereof by ordering the attendance, testimony, and production of the books, papers, records, or other data as is required and called for by the terms of the summons before Revenue Agent Malaga or any other proper officer or employee of the Internal Revenue Service at such time and place as may be fixed by Revenue Agent Malaga, or any other proper officer or employee of the Internal Revenue Service.
3. That the United States recover its costs in maintaining this action.
4. That the Court grant such other and further relief as is just and proper.

Respectfully submitted,

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¹ If the Court adopts the proposed Order, the United States requests that the hearing be scheduled at least forty-five days after the issuance of the order to allow sufficient time for service to be effectuated, in accordance with the proposed Order.